



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Turbo Mechanical, Inc.

File: B-231807

Date: September 29, 1988

DIGEST

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements through the use of competitive procedures, the proposed sole-source award of a contract under the authority of 10 U.S.C. § 2304(c)(1) is not objectionable where the agency reasonably determined that only one source could provide the required technical services for the inspection and overhaul of a turbine generator since the contracting agency does not possess or have rights in the technical data necessary for a competitive procurement and the protester has not shown that performance could be accomplished without such data.

DECISION

Turbo Mechanical, Inc. protests the proposed award of a sole-source contract to General Electric (GE) by the Air Force under solicitation No. F05603-88-R-0009 for the technical data and services necessary to assist Air Force personnel to inspect, test and repair a GE manufactured power plant turbine generator located at Clear Air Force Station, Alaska. Turbo alleges that the solicitation of these services on a noncompetitive basis is improper because the agency's requirements are not of a type available from only one responsible source.

We deny the protest.

The Air Force purchased three 7.5 megawatt turbine generators from GE approximately 20 years ago which provide power for mission and life support and a critical missile warning system at Clear Air Force Station. The turbine generators require inspection, testing and overhaul services every

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5 years. This is accomplished on a rotating basis. GE has retained proprietary rights to the factory drawings and field engineering manuals required for the performance of these services. In particular, the proprietary data identifies various tolerance levels of the turbine components which are necessary for the proper maintenance, operation and performance of the generators. Since the turbine generators were installed, Air Force personnel have performed the required inspection and overhaul of each turbine under the direction of a GE field representative pursuant to past sole-source contracts negotiated with GE.

The Air Force's present requirement was synopsisized in the Commerce Business Daily in May 1988. By letter of March 25, 1988, Turbo expressed interest in the upcoming procurement and submitted a list of related projects it had completed. On June 24, Turbo submitted a proposal to provide the required technical representative to supervise the inspection, test and repair of the turbine. Despite its inability to obtain the proprietary technical data retained by GE, Turbo contends that "industry standards equal or exceed the original manufacturer's specifications" and that its experience in other turbine projects indicates its ability to perform the overhaul work. Based upon Turbo's failure to provide convincing technical information, specifically to identify the referenced "industry standards" or alternative technical data and its failure to show sufficient turbine overhaul experience similar to that required, the Air Force determined that Turbo had not adequately demonstrated its ability to provide the required services.

The contracting officer prepared a Justification and Approval for the procurement of the services on a sole-source basis, citing the authority of Federal Acquisition Regulation § 6.302-1(b)(2) (FAC 84-28), which implements 10 U.S.C. § 2304(c)(1) (Supp. IV 1986). This statutory provision permits a noncompetitive award where only one known responsible source or a limited number of responsible sources are available and no other type of property or services will satisfy the needs of the agency. The action was approved by the requisite authority. The Air Force proposes award on a noncompetitive basis to GE. Turbo's protest of this proposed sole-source award was filed with our Office on June 27.

Because the overriding mandate of the Competition in Contracting Act (CICA) is for "full and open competition" in government procurements obtained through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), this

Office will closely scrutinize sole-source procurements under the exception to that mandate provided by 10 U.S.C. § 2304(c)(1). WSI Corp., B-220025, Dec. 4, 1985, 85-2 CPD ¶ 626. Where, however, the agency has substantially complied with the procedural requirements of CICA, 10 U.S.C. § 2304(f), calling for the written justification for and higher-level approval of the contemplated sole-source action and publication of the requirement CBD notice, we will not object to the sole-source award unless it can be shown that there is not a reasonable basis for the sole-source award. WSI Corp., B-220025, *supra*; see also Dynamic Instruments, Inc., B-220092, *et al.*, Nov. 25, 1985, 85-2 CPD ¶ 596. In sum, excepting those noncompetitive situations which arise from a lack of advance planning, a sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time. Data Transformation Corp., B-220581, Jan. 16, 1986, 86-1 CPD ¶ 55.

Here, the Air Force has complied with the statutory procedural requirements, under CICA at 10 U.S.C. § 2304(f), calling for the written justification for and higher-level approval of the contemplated sole-source action and publication of the requisite CBD notice. The propriety of the agency's decision to procure these services on a sole-source basis therefore rests on whether or not it was reasonable to conclude that only one source was available. Johnson Engineering and Maintenance, B-228184, Dec. 3, 1987, 87-2 CPD ¶ 544. The Air Force contends that the requirement for the inspection and overhaul of the turbine generator can only be satisfied through GE, since this firm is the only one that has access to the proprietary drawings, tolerance data and specifications which are indispensable to the proper inspection, overhaul and maintenance of the turbine.

Turbo does not refute the fact that it does not have access to this proprietary information, but instead asserts that this information is not necessary since alternative technical data and industry standards provide the required information. Turbo has not provided any information which identifies the availability of adequate alternative data or specific industry standards to support a competitive procurement. Further, Turbo has not shown that it possesses sufficient experience with the overhaul of this GE turbine generator to indicate the work can be performed without the proprietary information. Thus, the record contains no evidence rebutting the agency's position that GE's proprietary technical data is needed for performance. Turbo's mere assertion to the contrary is insufficient to show that the proprietary data are not necessary to complete the contract.

See Quality Diesel Engines, Inc., B-210215, June 20, 1983, 83-2 CPD ¶ 1. Accordingly, we have no basis to disturb the agency's determination that the services could only be provided by one known source. See Quality Diesel Engines, Inc., B-210215, supra.

The protest is denied.

for *Seymour Efron*
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General Counsel